

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CASE NO. CR11-70RAJ
	)	
v.	)	SEATTLE, WASHINGTON
	)	October 16, 2015
ROMAN SELEZNEV,	)	
	)	MOTION TO POSTPONE
Defendant.	)	FARETTA HEARING
	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICHARD A. JONES  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiff: NORMAN BARBOSA  
SETH WILKINSON  
ASSISTANT UNITED STATES ATTORNEYS

For the Defendant: ANDREA OSTROVSKY  
ANGELO CALFO  
CALFO HARRIGAN EAKES

Reported by: NANCY L. BAUER, CCR, RPR  
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October 16, 2015

**11:00 a.m.**

# PROCEEDINGS

THE CLERK: We are here in the matter of the United States v. Roman Seleznev, Cause No. CR11-70, assigned to this court.

Counsel, please make your appearances for the record.

MR. BARBOSA: Good morning, Your Honor. Norman Barbosa and Seth Wilkinson on behalf of the United States.

**THE COURT:** Good morning.

MS. OSTROVSKY: Good morning, Your Honor. Andrea Ostrovsky and Angelo Calfo here for Roman Seleznev. Linda Noble is interpreting.

THE COURT: All right. Good morning, all of you.  
Thank you for being here.

## Do we have just one interpreter?

MS. OSTROVSKY: Yes.

THE COURT: Okay. I'll let the interpreter know that sometimes in expanded hearings, we have two interpreters. If at any point in time you need a break or just an opportunity for people to slow down, or request anyone to slow down, or maybe just to have a breather, just let the court know. Just raise your hand. You won't interrupt the proceedings, but I want to make sure that you have the capacity to fully interpret what it is that's taking place. Is that agreed?

THE INTERPRETER: Thank you, Your Honor. And just

1 for the record, the interpreter wanted to note that the  
2 headphones don't seem to work in this particular instance.  
3 There is a hearing issue, and so it requires that the  
4 interpreter speak directly into the right ear, which means  
5 turning away from the court. So I just ask all the parties  
6 to be aware that I can't necessarily look, and I will ask  
7 people to speak reasonably slowly and clearly so that I can  
8 adequately interpret everything.

9 THE COURT: Yes, of course. Thank you.

10 We're here to address the motion of the defendant on the  
11 request for a *Faretta* hearing. But since the parties are all  
12 here, I want to get one matter out of the way. I've already  
13 indicated to counsel that I'm not going to permit oral  
14 argument on the defendant's motion for order prohibiting the  
15 prosecution team from obtaining and using BOP telephone  
16 records for use in prosecution. The court is denying that  
17 motion. The court believes that there is no legal basis to  
18 support the motion. I'm satisfied that the Ninth Circuit has  
19 upheld as proper that review by prosecution teams to monitor  
20 phone calls.

21 The law is also clear that the defendant had no reasonable  
22 expectation of privacy in his monitored communications, and  
23 no recognized privilege applies to his communication with his  
24 family and friends.

25 The court is also satisfied that there's no indication

1 that's been presented by the defense to suggest the  
2 defendant's ability to communicate with counsel has been  
3 compromised or that his ability to communicate with counsel  
4 in preparation for his case has been infringed in any way.

5 Absent such a showing, the court finds that there is no  
6 basis to support the motion, and the motion is denied without  
7 further argument.

8 Now, the defendant has filed a request for the opportunity  
9 to represent himself for pretrial motions.

10 Mr. Seleznev, I want to make sure you understand that what  
11 you presented to the court is labeled a *Faretta* hearing. A  
12 *Faretta* hearing is essentially the United States Supreme  
13 Court decision that requires the court to conduct a hearing  
14 to assess whether the defendant's desire to waive counsel and  
15 represent himself is knowing and voluntary.

16 Now, I'm going to ask you several questions, because  
17 that's the way the hearing works. It's primarily  
18 communication between the court and the defendant, to make  
19 sure that you understand what you're doing, that you're  
20 making an intelligent decision, and that you actually wish to  
21 represent yourself for pretrial matters.

22 So to begin, I'm going to have you placed under oath.  
23 Please raise your right hand to be placed under oath.

24 MS. OSTROVSKY: Your Honor, if I could, I'd actually  
25 like to say something to the court before the court starts.

1 THE COURT: Absolutely, counsel.

2 MS. OSTROVSKY: Thank you, Your Honor.

3 Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. OSTROVSKY: An issue has arisen over the last  
6 week or so that we need to bring to the court's attention and  
7 which requires us to ask this morning for a continuance of  
8 the *Faretta* hearing.

9 Most acutely, Mr. Calfo and I have been at the courthouse  
10 for the last hour and 15 minutes to meet with Mr. Seleznev  
11 before this hearing. We alerted the marshals three times to  
12 the fact that we were here and ready to meet with him. We  
13 were given five minutes to meet with him. He's not prepared  
14 for the hearing today, and he's asked us to ask for a  
15 continuance.

16 But, Your Honor, this is not the first impediment that's  
17 been put in our way to communicate with our client. About a  
18 week ago, without giving us any warning, the BOP moved  
19 Mr. Seleznev down to Sheridan, and we didn't find out that he  
20 was moved until he was able to make one attorney phone call  
21 from Oregon.

22 Sheridan is about five hours away from here. This makes  
23 it incredibly difficult for us to meet with Mr. Seleznev.  
24 Even speaking on the phone with him, our conversations are  
25 very limited and can't be substantive because his ability to

1 speak in English -- he's not a native English speaker. We  
2 need a translator to be able to interpret substantive  
3 conversations with him.

4 I brought this to the prosecutors' attention, Your Honor.  
5 A few days later, the next thing we knew, he was back at  
6 SeaTac. He's been held in the solitary housing unit since  
7 he's been returned to SeaTac, which means he cannot email me  
8 to let me know what's going on, he has to ask for permission  
9 to be able to call an attorney, and then it's at the  
10 discretion of the guard when he can make that phone call. He  
11 cannot make any personal phone calls.

12 And I understand that Your Honor denied our motion, but I  
13 think Your Honor understands that Mr. Seleznev has a very  
14 close relationship with his father. He speaks with his  
15 father about his strategy in this case, and he hasn't been  
16 able to have contact with his father whatsoever.

17 My understanding from the government is that they do not  
18 know where Mr. Seleznev will go after today's hearing. They  
19 do not know -- at least the last time I spoke with the  
20 prosecutors, they did not know if he would remain at SeaTac,  
21 or if he'll go somewhere else.

22 Your Honor, if he is moved away from SeaTac, we have very  
23 limited ability to be able to communicate with him  
24 effectively and prepare for the upcoming hearings, go through  
25 discovery, prepare for trial.

1           In addition, just the erratic shifting and moving him  
2           around, in and out of solitary confinement, from one place of  
3           incarceration to another, those transition periods make it  
4           very difficult for an inmate to communicate with counsel.  
5           He's, you know, in vans for long periods of time. He can't  
6           talk with us. It is making it very difficult for us to be  
7           able to consistently and effectively communicate with  
8           Mr. Seleznev.

9           And because he's been moved around, because he hasn't had  
10          good access to us, because we weren't able to speak with him  
11          this morning, we'd ask that Your Honor continue today's  
12          hearing.

13          We'd also ask that Your Honor continue the upcoming  
14          Pretrial Motions I deadline. The reason for that is that  
15          Mr. Seleznev's motion in paper is that he be able to file  
16          pretrial motions on his own, and the first pretrial motions  
17          deadline is October 26th. So I think the court needs to be  
18          able to rule, make a *Faretta* ruling before that first  
19          deadline so as not to prejudice the defendant's Sixth  
20          Amendment right to be able to represent himself at that stage  
21          of the proceedings, if that is what he decides he wants to  
22          do.

23          One more thing, Your Honor: The court has been alerted to  
24          the fact that the government believes it has information  
25          that's discoverable that is classified. They've notified the

1 court that they'd like the court to appoint a classified  
2 information security officer. We have already been in  
3 contact with Mr. Slade and understand from him that this  
4 process of getting security clearances could take a number of  
5 months.

6 So there is just a few things that are coming up that we  
7 think may require additional time to be able to prepare for  
8 trial, not the least of which is the access to counsel  
9 issues.

10 So we would ask the court to continue today's hearing,  
11 continue the Pretrial Motions I deadline, suspend the current  
12 case schedule, and set a status conference fairly soon, Your  
13 Honor, so that we can evaluate what's going on with  
14 Mr. Seleznev's housing situation, and we may, at that point,  
15 ask the court for a new scheduling order.

16 THE COURT: Let me ask you a question, counsel. Is  
17 there some reason why, as soon as you started to experience  
18 difficulty in terms of your client's housing, that you didn't  
19 let the court know right away? The court scheduled this  
20 hearing for an hour, and to be honest with you, I have a very  
21 congested calendar, and I certainly could have added another  
22 proceeding to take place and take some of the pressure off  
23 the back end of the court's calendar. When you do it as  
24 you're doing it, that means the court is going to waste the  
25 next hour-plus because of your inability to bring this to the



1 court's attention earlier.

2 MS. OSTROVSKY: I apologize, Your Honor, and I will  
3 absolutely, in the future, next time alert the court right  
4 away. I did alert the prosecutors and -- but next time I  
5 will alert the court. And I sincerely apologize for the  
6 inconvenience to the court.

7 THE COURT: And, counsel, part of what you're  
8 bringing to the court's attention deals with FDC activities,  
9 as opposed to the government's controls. Now, my  
10 understanding is the government doesn't have any control  
11 whatsoever as to where the defendant is housed or his  
12 transfer or relocation, or where he's actually positioned at  
13 the detention center. I don't think you have any reason to  
14 disagree with that, correct?

15 MS. OSTROVSKY: Well, I don't think that the  
16 prosecutors control the BOP, Your Honor. I do think that if  
17 the prosecutors communicate to the BOP that they are  
18 concerned that the BOP's actions are infringing on  
19 Mr. Seleznev's Sixth Amendment rights, I think that the BOP  
20 listens.

21 THE COURT: Well, the concern I have, counsel, is  
22 that if you're going to raise these types of issues about  
23 what's taking place at the Federal Detention Center, the  
24 Federal Detention Center has their own set of lawyers.  
25 They're not here today. I don't see anyone in the audience,

1 and certainly nobody is standing up now.

2 MR. BARBOSA: We actually do have an attorney, just  
3 for the court's knowledge, from BOP, because we wanted to be  
4 prepared to address the phone calls issue. We had not  
5 discussed this current issue. But there is somebody  
6 available if you have questions, Your Honor.

7 THE COURT: Okay. Thank you.

8 Counsel, please continue.

9 MS. OSTROVSKY: That's the end of my argument, Your  
10 Honor.

11 THE COURT: All right. I'll hear from counsel for  
12 the government.

13 MR. BARBOSA: Your Honor, as you've seen, the BOP  
14 does have some serious security concerns in this case, and  
15 they have been handling Mr. Seleznev very carefully.

16 He was moved last week. As soon as we learned about that,  
17 we began communicating with the BOP about the reasons for it.  
18 They did have some new security concerns last week that  
19 turned out to be unsubstantiated. They moved him back to the  
20 FDC, I believe as early as Monday or, at the latest, Tuesday.

21 We have been coordinating closely with the marshals and  
22 the BOP to make sure that Mr. Seleznev does have access to  
23 counsel, despite the added security precautions that the BOP  
24 has implemented, which have, at times, included him being in  
25 the SHU. He has not been permanently in the SHU. He's been

1 in a variety of different units. But, for example, when  
2 placed in the SHU, at one point he did not have contact  
3 visits with counsel. We've worked on that with the marshals.  
4 Mr. Wilkinson and I met personally with the warden to address  
5 the concern that he needed to have contact visits, and  
6 they've worked with us and have been very responsive to make  
7 sure that Mr. Seleznev had adequate access to counsel. Even  
8 last weekend, when he was briefly moved to Sheridan, when  
9 they did contact us and informed us of this, they let us know  
10 that he did have access to an attorney phone, an unmonitored  
11 attorney phone so he could communicate with counsel.

12 There's no question that an inmate in custody has more  
13 difficulty communicating with his counsel than somebody who  
14 is not in custody, but the BOP is responsive and they are  
15 working with us, and they are doing everything they can.

16 As far as this morning's situation, I just learned about  
17 that as we walked in for this hearing. We are available  
18 later. It sounds like the court may not be. But we're happy  
19 to allow counsel to have that hour to talk to their client,  
20 if there is a way to fit it into the court's schedule. So  
21 we'll make ourselves available. If it can't be done today,  
22 we already have -- we have some time available next Friday  
23 morning, also.

24 THE COURT: The court is not available, counsel, from  
25 Wednesday through Friday.

1 Counsel, if you could address one of the other concerns  
2 that counsel had, and she represented that when they had made  
3 attempts to contact their client when he was at Sheridan,  
4 that they had one call, is what counsel represented, or very  
5 limited opportunity to talk to their client, and it was also  
6 up to the discretion of the on-duty officer to decide if the  
7 defendant could even have access to counsel in the first  
8 place to make the call.

9 MR. BARBOSA: Yes. I understand the procedures in  
10 the BOP, and I believe this is the same as the FDC, are that  
11 when a defendant wants to make a call to their attorney, they  
12 have to request permission from their unit manager to make  
13 the call, and then the unit manager goes about arranging the  
14 call. It may take an hour or two. It may take some time to  
15 arrange it. But it's not an immediate -- they don't have a  
16 phone, for example, in their cell, where they can make a  
17 call. But that is the standard procedure. All the other  
18 inmates at the FDC are subject to the same circumstances.

19 When he's in the SHU, he also has the ability to  
20 request -- set up a phone call. BOP informed me that he had  
21 two phone calls the day he arrived at Sheridan, with counsel.  
22 I don't know if they have their information right. But they  
23 do have procedures in place, and they're acting under the  
24 same procedures as every other inmate.

25 THE COURT: Is there any reason why the defendant, if

1 the circumstances presented themselves, that would warrant  
2 his relocation or transfer to a different facility, that  
3 there can't be some communication with defense counsel so  
4 that they're not surprised or shocked or amazed by the fact  
5 that their client is not in the location where they thought  
6 they could contact him?

7 MR. BARBOSA: That -- first, my understanding as of  
8 today is that the BOP and the marshals have no current plans  
9 to move Mr. Seleznev from the FDC. Circumstances can,  
10 obviously, change, but that was a highly unusual  
11 circumstance.

12 In terms of informing counsel in advance of a move, that  
13 is something that the BOP and marshals would be extremely  
14 adverse to. That's a serious security concern in terms of  
15 allowing others to know when he may be transported. So they  
16 would be opposed to that.

17 THE COURT: Is there any reason why they can't call  
18 immediately upon transfer?

19 MR. BARBOSA: No. And they did call us, and we began  
20 contacting counsel as soon as we learned of it last Friday.  
21 We had some email communication issues. We didn't get that  
22 notice to them for several hours, maybe five to six hours  
23 after we learned. But once he was there, we learned, and we  
24 began communicating it to counsel. And once he was back, as  
25 soon as we learned, we communicated that to counsel.

1 THE COURT: All right. Thank you, counsel. Anything  
2 further?

3 MR. BARBOSA: No, Your Honor.

4 THE COURT: All right. Counsel?

5 MS. OSTROVSKY: Just two quick points, Your Honor.  
6 And, again, I apologize for the inconvenience to the court,  
7 but it's been my experience that I'm able to meet with my  
8 client before a hearing, such as this one, for at least 20 to  
9 30 minutes. We were not planning on not being able to meet  
10 with our client this morning, so...

11 The other -- just -- I just want to reiterate that our  
12 client doesn't speak great English, so having access to the  
13 phone while he's in the SHU, yes, my understanding is he can  
14 make a request, and when the BOP finds it appropriate, he can  
15 make a call, but I'm not allowed to get an interpreter on the  
16 line, and so it's very difficult to have a substantive  
17 conversation with him.

18 And, you know, what I heard is that there is no current  
19 plans to move Mr. Seleznev from SeaTac, but that isn't -- I'm  
20 not feeling very reassured, Your Honor, given what's happened  
21 over the last week, and just emphasizing again, it's just  
22 making it very difficult. This erratic moving around into  
23 different units, in the SHU, down to Sheridan, it's making it  
24 very difficult for us to communicate effectively with  
25 Mr. Seleznev.

1 THE COURT: Counsel, I don't have a crystal ball to  
2 be able to tell you what's taking place or what's going to  
3 take place down the road as to why that transport was  
4 necessitated. I don't have any information at this point in  
5 time.

6 The other concern I have is, when you say you wanted to  
7 meet with your client this morning to prepare him for his  
8 *Faretta* hearing, counsel, he filed his motion on August 26th,  
9 so there's been a considerable amount of time from the time  
10 he filed this motion, that you clearly had to be on notice  
11 that he filed the motion, and you clearly had to be on notice  
12 that the hearing was going to take place today, and yet you  
13 say today that you waited until ten o'clock today to talk to  
14 your client in preparation for the hearing. Is there some  
15 reason for that extended delay in preparing for the hearing  
16 today?

17 MS. OSTROVSKY: Your Honor, I did not say that I  
18 waited until this morning to talk to my client about the  
19 *Faretta* process or the *Faretta* hearing.

20 I met with my client earlier this week at the FDC. I've  
21 met with him numerous times between the time that he filed  
22 that motion and today. But when I met with him earlier this  
23 week, he and I discussed the fact that we would be able to  
24 talk again this morning, and we weren't able to do that.

25 THE COURT: All right. Thank you, counsel.

1           Let me get my calendar. I'll be right back.

2                           (COURT IN RECESS.)

3           THE COURT: Counsel for the defense, the court has  
4 made its decision. I'm going to grant a continuance only  
5 because the court can't accommodate any changes in today's  
6 schedule. We have a full sentencing calendar this afternoon,  
7 and I'm not going to alter someone's expectation that they  
8 had reason to believe they were going to be sentenced today,  
9 to have to postpone them because of the circumstances that  
10 you presented to this court. It's not fair to them, and it's  
11 certainly not fair to this court.

12           The other concern I have, counsel, about postponing this  
13 proceeding is -- and I'm not saying it's accurate,  
14 inaccurate, I'm not putting any weight as to the  
15 communications that the government has provided to this court  
16 by way of the recorded conversations, but it's a clear  
17 suggestion to this court from what's reflected in those  
18 communications that delay as a strategy is being considered  
19 or discussed quite frequently during the course of those  
20 communications.

21           This court expects that when we set deadlines, those  
22 deadlines are adhered to. This court expects this case to  
23 proceed just like any other case would proceed, in a fair and  
24 expeditious manner, giving the parties the opportunity to  
25 properly prepare their case without unnecessary delay.



1           So, again, I'm not confirming the accuracy or inaccuracy  
2 of those recordings or putting any weight one way or the  
3 other, but I want to send a clear statement to you and to  
4 your client that unwarranted delays or artificial or  
5 fictional reasons for delays will not be tolerated by this  
6 court.

7           As an officer of this court, you've represented that you  
8 didn't have the opportunity to have this last meeting with  
9 your client. I'm not exactly sure what else needed to be  
10 done. If you actually met with your client, and I have no  
11 reason to not believe that, as you've indicated, but it seems  
12 that when you walked into this court today, even if it was  
13 five minutes to 11:00, you should have been prepared to go  
14 forward with the *Faretta* hearing, and so should your client.

15           But under the record that you've made and under the  
16 circumstances that you've provided to this court,  
17 particularly with the moving and transfers of the defendant  
18 several times, it is for that reason the court gives greatest  
19 consideration for postponing.

20           So the date that I have available, counsel, will be  
21 October 27th at 9:00 a.m. Let me hear from the government if  
22 there is any reason why the government can't be here on  
23 October 27th at 9:00 a.m.

24           MR. BARBOSA: We can make that, Your Honor.

25           THE COURT: Counsel for the defense?

1 MS. OSTROVSKY: If I can just check my calendar.

2 THE COURT: Yes.

3 MR. CALFO: Your Honor, October 27th will work. And  
4 if I may have just a moment, Your Honor?

5 Your Honor, I just wanted you to know that we heard what  
6 you just said loud and clear. I hope the court knows that  
7 Ms. Ostrovsky and I have no interest -- never had in our  
8 entire law careers to ask the court to delay a proceeding for  
9 some inappropriate reason that our client may have concocted.  
10 We're not going to do that.

11 Those conversations that took place were before we got  
12 involved. Our conversations with Mr. Seleznev, I think, have  
13 been aimed at making sure that we can do a good job  
14 representing him and he understands the options that are  
15 available to him.

16 This *Faretta* issue has been a difficult issue for both the  
17 client and for us. And one of the reasons we wanted to meet  
18 with him this morning is that he still hasn't decided exactly  
19 how he's going to approach it. It's been an evolving issue.

20 So I want the court to know we have been diligent.  
21 Ms. Ostrovsky and I have both been very diligent in working  
22 with Mr. Seleznev on this *Faretta* issue. It's in flux. This  
23 is a man who is very vulnerable. He's away from his family.  
24 He's facing a lot of time here. He has no one to talk to,  
25 other than us and his father, and so it's a very difficult

1 situation. It's not quite as static as you might normally  
2 see, Your Honor. So I just wanted you to take those things  
3 into consideration.

4 Thank you.

5 THE COURT: I just want to make sure you're clear,  
6 counsel, and co-counsel is clear.

7 Both of you have excellent reputations in this court.  
8 Both of you have appeared before this court on numerous  
9 occasions and have always provided the highest caliber of  
10 service and representation to your clients. I don't expect  
11 that that's going to change, and the court's opinion of  
12 either of you certainly hasn't changed.

13 But under the circumstances of how this was put before  
14 this court today, I want to make sure that you and your  
15 client have a clear understanding of the court's expectations  
16 and what the court will and will not tolerate for the further  
17 proceedings.

18 MR. CALFO: And that's understood, Your Honor. We  
19 understand. I hope you understand why this happened today.

20 THE COURT: I understand that, counsel.

21 MR. CALFO: Thank you.

22 THE COURT: And, counsel, when you do have  
23 communication with your client, I trust -- I don't expect a  
24 response -- but I hope that you're emphasizing for him that  
25 oftentimes other individuals other than the lawyers -- I'm

1 talking about family, friends, other people housed and  
2 incarcerated with him -- will give him advice. Oftentimes  
3 that advice -- as a matter of fact, most of the time that  
4 advice is false, premised upon false expectations, or lack of  
5 an understanding of the process and procedures, but believe  
6 that what they're doing would trump the advice provided by  
7 counsel. So I hope that your client takes that into  
8 consideration, and that you take that under advisement when  
9 you communicate with your client of the importance of the  
10 communication with you, and not be influenced by other  
11 individuals who won't bear the consequences or suffer the  
12 consequences of bad decisions being made.

13 MR. CALFO: Thank you, Your Honor.

14 THE COURT: All right. So I set the date and time.

15 Counsel has requested a postponement of the case schedule.  
16 I'm not going to do that, counsel, right now. I want to have  
17 the *Faretta* hearing. The current case schedule deadline is  
18 the 26th of October. I'll put that in abeyance, counsel.  
19 I'll put it on hold, and I'll make a final determination of  
20 what that may look like as far as a continuation. You can  
21 expect a continuation of the case schedule deadline for that  
22 particular date, but I don't want to give you a firm or a  
23 fixed date until I've made a ruling on the *Faretta* hearing;  
24 otherwise, we can be postponing and rescheduling to a  
25 different date that doesn't make any sense. We don't have to

1 do that at this point in time. So I'll schedule it later,  
2 but just not right now.

3 Anything further from counsel for the defendant?

4 MS. OSTROVSKY: No, Your Honor.

5 THE COURT: Anything further, counsel for the  
6 government?

7 MR. BARBOSA: No, Your Honor.

8 THE COURT: All right. We're in recess.

9  
10 (THE PROCEEDINGS CONCLUDED.)  
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## C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 6th day of November 2015.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter